In The High Court of Uttaranchal, at Nainital

Criminal Misc. Application No. 724 of 2005

1- Smt. Vachan Dei W/o Om Prakash
2- Om Prakash S/o Nagina
Both R/o Village Ruhalki, Dlayalpur
P.S. Bhagwanpur, District Haridwar .....Applicants

Versus

1- Rangoon Singh S/o Chaman
2- Ramesh S/o Dhyan Singh,
3- Mange Ram S/o Chaman
4- Chaman Lal S/o Ilam Chand
5- Praveen S/o Chaman Lal
All R/o Village Kuhalki Dayalpur,
P.S. Bhagwanpur,
District Haridwar
6- State of Uttaranchal,
7- District & Sessions Judge,
Haridwar. .....Respondents

Sri Pawan Kuamr, learned counsel for the applicants.
Sri S.S. Bhandari, learned counsel for the respondent 1 to 5.
Sri Lalit Verma, learned AGA for the State.

Hon'ble B.C. Kandpal, J.

This petition U/S 482 Cr. P.C. has been filed by the applicants, who are complainant in the criminal Case No. 412/2003, State Versus Ramesh and others, U/Ss 147, 148, 149, 323, 324, 325, 506 I.P.C. challenging the order dated 6-9-2005 passed by the District and Session Judge, Haridwar in Criminal Misc. Case No. 2/2005 Smt. Vachan Dei Vs. State and others, by which revision filed by the applications against the

acquittal of respondent Nos. 1 to 5 was dismissed in default of the revisions.

2- Heard Sri Pawan Kumar, learned counsel for the petitioners, Sri Sundra Singh Bhandari, learned counsel for the respondent Nos. 1 to 5 and learned A.G.A. and perused the record.

3- The record reveals that the opposite parties 1 to 5 were tried for the offences U/Ss 147,148, 149, 323, 324,325, 506 I.P.C. and the learned Magistrate after having perused the evidence on record acquitted the opposite parties 1 to 5, vide judgment and order dated 4-8-2004. The revisionists thereafter preferred a revision against the acquittal of the respondents 1 to 5 before the court of District and Sessions Judge. The revision filed by the applicants/complainants was dismissed in their default vide order dated 6-9-2005 passed by the District and Sessions Judge, Haridwar.

4- The petitioners feeling aggrieved by the aforesaid order have preferred this petition before this court.

5- The revision was filed by the petitioners against the acquittal of respondent Nos. 1 to 5 and the law expects that the revisional court while disposing of a revision against the acquittal of the accused persons, is not supposed to dismiss the revision merely on the ground of default of the revisionists. The Court should peruse the reasoning of the trial court in the judgment with a view to satisfy itself that the reasoning and findings recorded by the trial court are consistent with the material available on record. The law does not envisage the dismissal of the revision for default or non-prosecution, but only contemplates the dismissal of the same on

merits after perusal of the record. Therefore, I find it difficult to agree with the view adopted by the lower revisional court that if the revisionist or his Pleader is not present before the court, the proper course would be to dismiss the revision against the acquittal for want of prosecution.

6- The lower revisional court ought to have decided the revision after having perused the material available on record and satisfying himself as to whether the finding recorded by the trial court acquitting the accused persons, is consistent with the evidence on record or not.

7- I, therefore, am of the view that the impugned order dated 6-9-2005 passed by the lower revisional court is not sustainable in eye of law.

8- The petition is accordingly allowed. The impugned order dated 6-9-2005 passed by the lower revisional court, dismissing the revision in default of the revisionists, is hereby set aside.

9- The District and Session Judge, concerned is directed to dispose of the revision, after giving an opportunity to the parties, on merit.

Dated: 02.08.2006 **(B.C. Kandpal, J.)**

ISB